

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

JOSE CORTEZ, an individual,	)	Case No. CV 11-03274 DDP (AGRx)
	)	
Plaintiff,	)	<b>ORDER DENYING IN PART AND</b>
	)	<b>GRANTING IN PART DEFENDANTS'</b>
v.	)	<b>MOTION FOR SUMMARY JUDGMENT</b>
	)	
LEROY D. BACA, SHERIFF OF	)	[Docket No. 34]
THE LOS ANGELES COUNTY	)	
SHERIFF'S DEPARTMENT; THE	)	
COUNTY OF LOS ANGELES, a	)	
Municipal corporation; LOS	)	
ANGELES COUNTY DEPUTY	)	
SHERIFF CASTLE, BADGE NO.	)	
515174, an individual; AND	)	
LOS ANGELES COUNTY DEPUTY	)	
SHERIFF BRADEN, BADGE NO.	)	
405667, an individual,	)	
	)	
Defendants.	)	
	)	
	)	
	)	
	)	

Presently before the court is Defendants' Motion for Summary Judgment, or in the Alternative Summary Adjudication of Issues ("Motion"). Having reviewed the parties' moving papers and heard oral argument, the court denies the Motion in part, grants the Motion in part, and adopts the following Order.

1   **I.    BACKGROUND**

2           Defendant Los Angeles County Deputy Sheriff Castle ("Deputy  
3   Castle") handcuffed Plaintiff Jose Cortez ("Cortez") during a  
4   traffic stop on April 23, 2010. Defendant Deputy Sheriff Braden  
5   ("Deputy Braden") was present at the time and acting as Deputy  
6   Castle's field training officer.

7           Cortez filed a First Amended Complaint on April 10, 2012,  
8   alleging the following federal claims: 1) constitutional violations  
9   of the First, Fourth, Fifth, Eighth, and Fourteenth Amendments; 2)  
10   racial discrimination, in violation of 42 U.S.C. § 1981; and 3) use  
11   of excessive force, in violation of 42 U.S.C. § 1983. Cortez also  
12   alleges state law claims for battery, false imprisonment,  
13   intentional infliction of emotional distress, and negligence.

14          Defendants filed this Motion on June 4, 2012, arguing that  
15   they are entitled to judgment as a matter of law on all of Cortez's  
16   claims.

17   **II.   LEGAL STANDARD**

18          Summary judgment is appropriate where "the movant shows that  
19   there is no genuine dispute as to any material fact and the movant  
20   is entitled to a judgment as a matter of law." Fed. R. Civ. P.  
21   56(a); see also Celotex Corp. v. Catrett, 477 U.S. 317, 324 (1986).  
22   In deciding a motion for summary judgment, the evidence is viewed  
23   in the light most favorable to the non-moving party, and all  
24   justifiable inferences are drawn in its favor. Anderson v. Liberty  
25   Lobby, Inc., 477 U.S. 242, 255 (1986).

26          A genuine issue exists if "the evidence is such that a  
27   reasonable jury could return a verdict for the nonmoving party,"  
28   and material facts are those "that might affect the outcome of the

1 suit under the governing law." Id. at 248. No genuine issue of  
2 fact exists "[w]here the record taken as a whole could not lead a  
3 rational trier of fact to find for the non-moving party."  
4 Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574,  
5 587 (1986).

6 It is not enough for a party opposing summary judgment to  
7 "rest on mere allegations or denials of his pleadings." Anderson,  
8 477 U.S. at 259. Instead, the nonmoving party must go beyond the  
9 pleadings to designate specific facts showing that there is a  
10 genuine issue for trial. Celotex, 477 U.S. at 324. The "mere  
11 existence of a scintilla of evidence" in support of the nonmoving  
12 party's claim is insufficient to defeat summary judgment.  
13 Anderson, 477 U.S. at 252. But "[c]redibility determinations, the  
14 weighing of the evidence, and the drawing of legitimate inferences  
15 from the facts are jury functions, not those of a judge," when he  
16 or she is ruling on a motion for summary judgment. Id. at 255.

### 17 **III. DISCUSSION**

#### 18 **A. Undisputed Claims**

19 As an initial matter, Cortez concedes that Defendants are  
20 entitled to summary judgment on his claims for constitutional  
21 violations of the First, Fifth, and Eight Amendments, and all  
22 claims against Defendant Sheriff Leroy D. Baca. The court  
23 therefore grants Defendants' Motion as to these claims.

#### 24 **B. Excessive Force Claims**

25 Defendants also argue that they are each entitled to summary  
26 judgment on Cortez's excessive force claims under the Fourth and  
27 Fourteenth Amendments and 42 U.S.C. § 1983. The court disagrees.

1  
2 An excessive force claim turns on whether the officer's "use  
3 of force was objectively reasonable under the circumstances,"  
4 balancing the plaintiff's liberty interest with the government  
5 interests at stake. Santos v. Gates, 287 F.3d 846, 853 (9th Cir.  
6 2002) (citing Graham v. Connor, 490 U.S. 386, 396 (1989)). Thus,  
7 "even where some force is justified, the amount actually used may  
8 be excessive." Santos, 287 F.3d at 853. Because this analysis  
9 almost always "requires a jury to sift through disputed factual  
10 contentions, and to draw inferences therefrom," summary judgment  
11 "should be granted sparingly" in excessive force cases. Id.

12 Here, the parties dispute a number of facts regarding the  
13 incident, such as whether a warrant check returned a felony or a  
14 misdemeanor warrant for an individual who turned out to be a  
15 different "Jose Cortez." But the court only needs to address one  
16 factual question to resolve this Motion: whether Defendant Castle  
17 used excessive force in his manner of handcuffing Cortez. On the  
18 one hand, Defendants contend that Deputy Castle conducted a routine  
19 and reasonable handcuffing of Cortez. Cortez, however, has  
20 provided evidence to the contrary.

21 According to Cortez's own deposition, Deputy Castle first  
22 "came up and shoved" Cortez into "the back of [his] truck." Deputy  
23 Castle then "kicked [Cortez's] feet open" - kicking each foot "at  
24 least three" times - and pulled both of Cortez's arms back until  
25 his "hands were crossed." In doing so, Deputy Castle "pulled  
26 [Cortez's right hand] back three times," pulling it "real hard"  
27 each time. Cortez felt pain in his shoulder with each pull and  
28 indicated his pain by moaning "[a]t least two times," loud enough

1 for Deputy Castle to hear. Cortez made gestures with his face as  
2 well, so that "anyone looking at [him] . . . would have known that  
3 [he] was in pain." Deputy Castle ultimately placed the handcuffs  
4 only on Cortez's left wrist. While he was being handcuffed, Cortez  
5 also asked Deputy Castle if he could use the bathroom. Deputy  
6 Castle did not respond and Cortez eventually urinated on himself,  
7 while he was still in handcuffs. (Decl. of Kenneth J. Sargoy in  
8 Supp. of Mot. ("Sargoy Decl.") ¶ 3, Ex. A.)

9 Cortez went to the hospital two days later, where he told  
10 doctors that he was injured by the handcuffing. A doctor diagnosed  
11 Cortez with a "right proximal biceps tendon rupture" and provided  
12 prescription pain medicine. (Id. ¶ 8, Ex. F.) An orthopedist has  
13 since recommended arthroscopic surgery, noting a "tear of the long  
14 head of the biceps tendon" and a "[p]artial thickness rotator cuff  
15 tear." (Id. ¶ 12, Ex. J.)

16 A passenger riding with Cortez at the time of the incident  
17 also testified at deposition. According to the passenger, Deputy  
18 Castle "moved . . . Cortez's feet" using a "drastic[]" amount of  
19 force. Deputy Castle also pulled Cortez's arm back "harshly" and  
20 "not gentl[y]," although not "violent[ly]." (Id. ¶ 4, Ex. B.)

21 Finally, Deputy Braden testified at deposition that he was  
22 Deputy Castle's "field training officer" and "supervisor" at the  
23 time of the incident. He also stated that he was "[s]tanding two  
24 feet from" Deputy Castle and Cortez, while "Deputy Castle applied  
25 [the] handcuffs." (Id. ¶ 5, Ex. C at 2-3, 14-15.)

26 In short, viewing the evidence in the light most favorable to  
27 Cortez, Deputy Castle used the following force against "a  
28 cooperative, non-resisting 66-year old man," during a traffic stop

1 for a "minor vehicle code violation": 1) he pushed Cortez into the  
2 back of Cortez's truck; and 2) kicked Cortez's legs multiple times  
3 in a harsh manner; then 3) yanked Cortez's right arm back multiple  
4 times, hard enough to cause serious injury to Cortez's shoulder and  
5 biceps; while 4) Cortez moaned and made facial gestures to indicate  
6 his pain to Deputy Castle, each time that Deputy Castle pulled his  
7 arm. (Opp'n at 8.) Whether or not the Deputies had a valid reason  
8 to handcuff Cortez in the first place - based on the misdemeanor or  
9 felony warrant information - a reasonable jury could find that  
10 Deputy Castle used excessive force in how he went about handcuffing  
11 Cortez.

12 In addition, Deputy Braden could be liable for Deputy Castle's  
13 alleged conduct - as Deputy's Castle's immediate supervisor,  
14 standing two feet away during the incident, but taking no steps to  
15 intervene. See, e.g., Taylor v. List, 880 F.2d 1040, 1045 (9th  
16 Cir. 1989) (explaining that, although there is no respondeat  
17 superior liability under § 1983, a supervisor can be "liable for  
18 constitutional violations of his subordinates if the supervisor . .  
19 . knew of the violations and failed to act to prevent them").

20 Finally, the court finds that neither Deputy is entitled to  
21 qualified immunity on Cortez's excessive force claims. As  
22 discussed, taking the evidence in the light most favorable to  
23 Cortez, the Deputies violated his constitutional rights by using  
24 excessive force during the handcuffing. Also, under these  
25 particular circumstances, a reasonable officer would have known  
26 that force sufficient to cause a tendon rupture was  
27 unconstitutional. It is clearly established - and Defendants do  
28 not dispute - that pulling an individual's arm multiple times and

1 forcefully enough to cause serious injury while the individual  
2 expresses pain, without any apparent justification for doing so, is  
3 unconstitutional. It is also clearly established that it is  
4 unconstitutional for a supervisor to fail to act to prevent such  
5 obvious constitutional violations, when the supervisor is present  
6 and directly observing the violation.

7 For all of these reasons, Deputies Castle and Braden are not  
8 entitled to summary judgment on Cortez's excessive force claims.

9 **C. 42 U.S.C. § 1981 Claim**

10 As Defendants correctly explain, however, Cortez has provided  
11 no evidence that Defendants' alleged actions were racially  
12 motivated. In arguing to the contrary, Cortez notes only that: 1)  
13 the Deputies knew of Cortez's Hispanic ancestry; and 2) they used  
14 excessive force against him. What is missing is any evidence -  
15 circumstantial or otherwise - that the Deputies' alleged excessive  
16 force was connected to their awareness of Cortez's race.

17 Defendants are therefore entitled to summary judgment on Cortez's §  
18 1981 claim.

19 **D. Monell Liability**

20 Similarly, Cortez has not provided any evidence of a County of  
21 Los Angeles ("County") custom or policy from which a reasonable  
22 trier of fact could find Monell liability against the County on his  
23 federal claims. Cortez's only argument for such liability is that  
24 Deputy Braden's "single egregious act" of "deliberate indifference  
25 to the rights of" Cortez is "sufficient to render the County liable  
26 under Monell." Cortez provides one case cite for this proposition,  
27 involving very different circumstances. The court finds that  
28 Monell liability cannot be inferred solely from the single incident

1 at issue here. The County is therefore entitled to summary  
2 judgment on all of Cortez's federal claims.

3 **E. State Law Claims**

4 Finally, Defendants argue that the County is entitled to  
5 summary judgment on Cortez's state law tort claims, because "public  
6 entities do not face common law liability." In response, Cortez  
7 cites to the Ninth Circuit's decision addressing similar claims in  
8 Robinson v. Solano County, 278 F.3d 1007, 1016 (9th Cir. 2002). As  
9 the Circuit explained: under California law, a county's immunity to  
10 such tort claims turns on whether the individual officers are  
11 immune; and California denies immunity to officers who use  
12 excessive force. See id. Thus, neither the Deputies nor the  
13 County are entitled to summary judgment on Cortez's state law tort  
14 claims here.

15 **IV. CONCLUSION**

16 For all of these reasons, the court hereby DENIES Defendants'  
17 Motion for Summary Judgment as to: 1) Plaintiff's excessive force  
18 claims against Deputies Castle and Braden; and 2) Plaintiff's state  
19 law tort claims against the Deputies and the County. The court,  
20 however, GRANTS summary judgment for: 1) Defendant Baca on all of  
21 Plaintiff's claims; 2) the County on all of Plaintiff's federal  
22 claims; and 3) all Defendants on Plaintiff's § 1981 and First,  
23 Fifth, and Eighth Amendment claims.

24 IT IS SO ORDERED.

25  
26 Dated: September 7, 2012



DEAN D. PREGERSON  
United States District Judge